

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 16-MJ-863

MARLENA SCOTT,

Defendant.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

On May 19, 2016, Marlena Scott was charged in a criminal complaint with distributing more than 500 grams of cocaine in violation of 21 U.S.C. §§ 841(a) and 841(b)(1)(B). The government had 30 days from that date to obtain an indictment. 18 U.S.C. § 3161(b). Because no indictment was issued within that time, on July 1, 2016, I held a hearing asking the government to show cause why the complaint should not be dismissed. At the hearing the government conceded that it had no good cause for the delay in obtaining an indictment. Accordingly, I dismissed the complaint.

The issue remains, however, whether the dismissal should be with or without prejudice. The factors to be considered in making such a determination are set out in the statute. Section 3162(a)(1) provides: “In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of reprosecution on the administration of this chapter and on the administration of justice.” Weighing these factors, I find that dismissal without prejudice is warranted. The charged offense is serious. The defendant was not in custody. Although she was subject to electronic monitoring while on release, it has not been

shown that the delay caused her any prejudice. Additionally, the facts and circumstances which led to the dismissal do not indicate that the delay was intentional or it was orchestrated to gain some tactical advantage for the government. Rather, it appears that the delay was caused by inadvertence or inattention. Finally, nothing in the record before me suggests that a reprosecution in this case will have an adverse impact on the administration of the Act and on the administration of justice.

NOW, THEREFORE, IT IS HEREBY ORDERED that the complaint is dismissed without prejudice.

Dated at Milwaukee, Wisconsin this 1st day of July, 2016.

BY THE COURT:

s/Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge